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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,370	07/03/2003	Kenneth Strannemalm	018798-172	3714

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EXAMINER

GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Period for Reply

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2006 and 20 April 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10-17 and 19-33 is/are pending in the application.
4a) Of the above claim(s) 1-6, 10-17, 19, 20, 27 and 30-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-6, 10-17 and 19-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/14/06 has been entered.

Election/Restrictions

2. Applicant's election of Species I (Figs. 1-4) in the reply filed on 4/20/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 1-6, 10-17, 19-20, 27, and 30-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Claims 20 and 33 have been withdrawn because they are considered to read on non-elected species IX (Fig. 13) (see specification page 18 in regards to "friction members"). Election was made **without** traverse in the reply filed on 4/20/06.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 21-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher (US 5,290,270) in view of Cottenden (US 5,702,381) in further view of O'Brien (US 4,675,918).

In regard to Claims 21-22, Fisher discloses a pants-shaped absorbent product 10 for males, comprising a front section 14, a rear section 16, a crotch section 18, side sections S to connect the front section 14 and the rear section 16 in the lateral direction, wherein the side sections S comprise hip sections H, an elastic waist region 12, 22, and an absorbent element 34, which covers the penis of the user (column 2, lines 58-column 3, line 10; Figs 1-2, Fig. A below). (The front, rear, and crotch sections 14, 16, 18, are disclosed as being elastic (column 2, line 67- column 3, line 1); thus, the examiner considers the brief 12 (and more specifically, its upper half), which comprise each of these regions—along with waistband 22—to be the elastic waist region.) The product further comprises a liquid-tight outer layer 56 to cover the absorbent element 34 (54) at least on the side thereof facing away from the user when the product is worn; wherein the front section 14 has at least one elastic member 22. The elastic member 22 enables the front section 14 of the product to be pulled down during use, counter to the action of the elastic member, to a position in which the upper limit edge L of the front section 14

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in the middle region of the front section 14 is situated below the penis of the user, at the same time as at least the hip sections H of the product are arranged to be held in place around the waist of the user (column 4, lines 20-54). The absorbent element 34 is configured with one or more deformation zones 36/38/28, which enable parts 48 of the absorbent element 34 that are situated above and over the penis of the user during product usage to be drawn down together with the rest of the front section 14 when the front section 14 of the product 10 is pulled down, and wherein the front section 14 and the absorbent element 34 are arranged to be returned by the elastic member 22 to an original usage position (column 4, lines 20-54; Figs.1-3 and 6). The examiner has defined deformation as the alteration in the shape or form of an object. In this case, the addition of a pocket 36 to the front section 14 of product 10 results in an alteration of the shape of the brief 12, especially since it is disclosed that the pocket 36 is typically thicker than the brief 12, which would result in a change in the thickness of the front section 14 and in the overall shape of the brief 12.

Giving the recitation, "wherein the absorbent element is configured with one or more deformation zones," a more narrow interpretation, Fisher does not expressly teach that the material of the absorbent element 34 comprises deformation zones.

Cottenden teaches an absorbent element 10 that is to cover the penis of the user and may include means for securing the product to the user's clothing (column 2, lines 14-24). The absorbent element 10 further comprises a liquid-tight outer layer 14 and deformation zones 20/22 (as well as the areas between these elements, which will hereafter be referred to as valleys 21). The deformation zones 20 allow the product to

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be convertible between a two-dimensional structure for storage and a three-dimensional structure for use (abstract; column 2, lines 9-24).

Thus, it would have been obvious of one of ordinary skill in the art to modify the insert of Fisher to have deformations as taught by Cottenden, since doing so would allow for the insert to be convertible from a two-dimensional state for storage to a three-dimensional state for use.

Fisher in view of Cottenden disclose that the elastic waist region is formed at least in part from an elastic first piece to partially surround the trunk of the user and form the rear section and side sections comprising hip sections, wherein a second piece incorporated in the product is configured to form the front section and crotch section, wherein the second piece is elongated with two opposing end edges and two opposing longitudinal edges, wherein the width of the second piece, at least at the crotch section, is less than the length of the first piece, wherein the second piece is arranged in the longitudinal direction perpendicularly to the longitudinal direction of the first piece and is connected by a first end section centrally onto the one longitudinal edge section of the first piece, wherein the one end section of the first piece is connected to a first side edge section of the second piece, and wherein the second end section of the first piece is correspondingly connected to a second side edge section of the second piece and the absorbent element is fitted, in its entirety, on the second piece (Figures). Fisher in view of Cottenden do not expressly disclose that the elastic first piece is essentially rectangular. However, a change in the shape of the first elastic piece of Fisher in view of Cottenden to be essentially rectangular is a consideration within the ordinary skill of the

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art. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CPA 1966). Such change in shape is further supported by O'Brien, which discloses an essentially rectangular first elastic piece and further disclose providing the undergarment in simplified construction for use by those who sometimes have difficulty donning and removing conventional briefs (Figs., column 1). Thus, it would have been further obvious to one of ordinary skill in the art to modify the undergarment of Fisher in view of Cottenden to provide a simplified undergarment construction having an essentially rectangular first elastic piece, as taught by O'Brien, since doing so would provide for easier use of the undergarment by those who sometimes have difficulty donning and removing conventional briefs.

a higher elastic stretchability than the rest 12 of the elastic waist region 12, 22.

In regard to Claim 23, Fisher does not disclose any information concerning the tensile stress of the elastic member 22 or the elastic waist region 12, 22. However, the elastic member 22 is shown as being made from a single strip of material (Figs. 1-2 and 6), which would result in the material having the same properties throughout. Thus, the elastic member 22 would have a constant tensile stress when stretched. Also, the examiner has taken the phrase "the same order of magnitude as the tensile stress in the elastic waist region" to mean that the elastic member and the elastic waist region are about to be stretched about the same distance. Based on Fig. 6, the elastic member 22 and the elastic waist region 12, 22 have about the same degree of stretchability.

In regard to Claim 24, as discussed for Claim 1, the elastic member 22 is considered part of the elastic waist region 12, 22 and therefore comprises a section of the elastic waist region 22.

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In regard to Claim 25, the elastic waist region 12, 22 completely surrounds the waist; therefore a section of it extends over the front section 14 between the hip sections H (Figs. 1-3 and Fig. A above).

In regard to Claim 26, the elastic waist region 12, 22 completely surrounds the waist; therefore a section of it extends over the front section 14, rear section 16, and side sections S (Figs. 1-3 and Fig. A above). The elastic member 22 is shown to have a higher elastic stretchability than the rest 12 of the elastic waist region 12, 22.

In regard to Claim 28, the liquid-tight outer layer 14 is flexible (column 3, lines 62-65) and the periphery 16 may comprise an elastic element 23 to allow for some expansion of the absorbent element 10 (column 3, lines 19-40), which would make the absorbent element 10 capable of being bent at fold notches 21 when the front section (12 of Fisher) of the article (10 of Fisher) is pulled down.

2. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher in view of Cottenden in view of O'Brien, as applied to Claim 28 above, in further view of Buell (US 5,197,959).

In regard to Claim 29, Fisher in view of Cottenden does not disclose that the fold notches comprise recesses, through-slots, or compression lines in the absorbent element. However, Buell et al. teach that geometric discontinuities (deformations) within an absorbent may be created by pre-set folds, scoring, indentations, or changes in the material properties of an article (column 13, lines 1-37, more specifically lines 20-29). Fisher, Cottenden, and Buell are analogous arts since they are from the same field of

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endeavor: absorbent articles for removing bodily waste. Furthermore, these prior art are analogous arts since they are from a similar problem solving area: providing absorbent articles with means for bending. Thus, it would have been obvious to one of ordinary skill in the art to modify the absorbent element of Fisher in view of Cottenden to comprise recesses, through-slots, or compression lines instead of folds/pleats since the folds/pleats, recesses, through-slots, and compression lines are all recognized equivalents within the art, as supported by Buell, and the selection of any of these known equivalents to provide deformation zones for bending would be within the level of ordinary skill in the art.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Artzt (US 3,496,576), Bruemmer-Prestley (WO 01/13851).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson
Examiner
Art Unit 3761

klg 7/9/06

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

